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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,366	04/12/2001	Mary Vijayarani Barnabas	7312M	7246

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EXAMINER

KUMAR, PREETI

ART UNIT PAPER NUMBER

1751

DATE MAILED: 09/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/807,366

Applicant(s)

BARNABAS ET AL

Examiner

Preeti Kumar

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Non-Final Rejection

1. Claims 1-44 are pending.

Claim Objections

2. Claims 7-14, 20, 28, 31-42 and 44 are objected to because of the following informalities:

Claims 7-14, 20, 28, 31-42 and 44 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and cannot depend from any other multiple dependent claim. Furthermore a claim cannot depend from itself. See MPEP § 608.01(n). However, the claimed limitations have been ascertained in light of the specification and thus, the claims have been further treated on the merits. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1-44, the phrases "preferably" and then "more preferably" render the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Art Unit: 1751

Also, claim 43 provides for the use of fabric improving active, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 43 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Trinh et al. (US 6,001,343).

Trinh et al. teach a stable, aqueous odor-absorbing and wrinkle controlling composition, preferably for use on inanimate surfaces, especially fabrics. The composition comprises from about 0.1% to about 20%, by weight of the composition, of solubilized, water-soluble, uncomplexed cyclodextrin and an effective amount of at

Art Unit: 1751

least one ingredient to improve the performance of the composition selected from the group consisting of: (1) cyclodextrin compatible surfactant; (2) cyclodextrin compatible antimicrobial active; and (3) mixtures thereof. The composition also comprises a wrinkle control agent which is fabric lubricant, shape retention polymer, hydrophilic plasticizer, lithium salt, or mixtures thereof. Hydrophilic perfume improves acceptance. Optionally, the composition can contain low molecular weight polyols; metallic salts to help control odor; a humectant, etc. The composition is essentially free of any material that would soil or stain fabric. The composition is preferably applied as small particle size droplets, especially from spray containers. The cyclodextrin/surfactant combination, either alone, or in combination with the other ingredients, provides improved antimicrobial activity. See abstract.

Specifically regarding claims 1-14, Trinh et al. teach a preferred class of cyclodextrin-compatible nonionic surfactants are the polyalkylene oxide polysiloxanes having a dimethyl polysiloxane hydrophobic moiety and one or more hydrophilic polyalkylene side chains, and having the general formula:

$$\text{R.sup.1} \text{--}[(\text{CH.sub.3})\text{SiO}]_a \text{--}[(\text{CH.sub.3})(\text{R.sup.1})\text{SiO}]_b \text{--Si}(\text{CH.sub.3})_2 \text{--R.sup.1}$$

wherein $a+b$ are from about 1 to about 50, preferably from about 3 to about 30, more preferably from about 10 to about 25, and each R.sup.1 is the same or different and is selected from the group consisting of methyl and a poly(ethyleneoxide/propyleneoxide) copolymer group having the general formula:

$$\text{--}(\text{CH}_2)_n \text{O}(\text{C}_2\text{H}_4\text{O})_c (\text{C}_3\text{H}_6\text{O})_d \text{R.sup.2}$$

Art Unit: 1751

with at least one R¹ being a poly(ethyleneoxide/propyleneoxide) copolymer group, and wherein n is 3 or 4, preferably 3; total c (for all polyalkyleneoxy side groups) has a value of from 1 to about 100, total d is from 0 to about 14, total c+d has a value of from about 5 to about 150, and each R² is the same or different and is selected from the group consisting of hydrogen, an alkyl having 1 to 4 carbon atoms, and an acetyl group, preferably hydrogen and methyl group. Each polyalkylene oxide polysiloxane has at least one R¹ group being a poly(ethyleneoxide/propyleneoxide) copolymer group.

Specifically regarding claim 3, Trinh et al. teach cyclodextrin compatible silicone to impart a lubricating property to the fabric. See col.28-30 in their entirety. Trinh et al. teach that "silicone" as used herein preferably refers to emulsified and/or microemulsified silicones, including those that are commercially available and those that are emulsified and/or microemulsified in the composition, unless otherwise described. Some non-limiting examples of silicones which are useful in the present invention are: non-volatile silicone fluids such as polydimethyl siloxane gums and fluids; volatile silicone fluid which can be a cyclic silicone fluid of the formula $[(CH_3)_2SiO]_n$ where n ranges between about 3 to about 7, preferably about 5, or a linear silicone polymer fluid having the formula $(CH_3)_3SiO[(CH_3)_2SiO]_mSi(CH_3)_3$ where m can be 0 or greater and has an average value such that the viscosity at 25.degree. C. of the silicone fluid is preferably about 5 centistokes or less. Thus one type of silicone that is useful in the composition of the present invention is polyalkyl silicone with the following structure:

Art Unit: 1751



The alkyl groups substituted on the siloxane chain (R) or at the ends of the siloxane chains (A) can have any structure as long as the resulting silicones remain fluid at room temperature and do not substantially form a complex with cyclodextrin. Each R group preferably is alkyl, hydroxy, or hydroxyalkyl group, and mixtures thereof, having less than about 8, preferably less than about 6 carbon atoms, more preferably, each R group is methyl, ethyl, propyl, hydroxy group, and mixtures thereof, most preferably each R group is methyl. Aryl, alkylaryl and/or arylalkyl groups are not preferred. Each A group which blocks the ends of the silicone chain is hydrogen, methyl, methoxy, ethoxy, hydroxy, propoxy, and mixtures thereof, preferably methyl. q is preferably an integer from about 7 to about 8,000. The preferred silicones are polydimethyl siloxanes; more preferred silicones are polydimethyl siloxanes having a viscosity of from about 10 to about 1000,000 centistokes at 25.degree. C. Mixtures of volatile silicones and non-volatile polydimethyl siloxanes are also preferred. Trinh et al. also teach all of the formulas recited in claim 3, in col.29-30.

Regarding claims 15-28, Trinh et al. teach that the cyclodextrin composition be used in an article of manufacture. See col. 40 where Trinh et al. teach that the article of manufacture comprises a spray dispenser. The cyclodextrin composition is placed into a spray dispenser in order to be distributed onto the fabric. Said spray dispenser for producing a spray of liquid droplets can be any of the manually activated means as is known in the art, e.g. trigger-type, pump-type, non-aerosol self-pressurized, and aerosol-type spray means, for treating the odor-absorbing composition to small fabric

Art Unit: 1751

surface areas and/or small articles, as well as non-manually operated, powered sprayers for conveniently treating the odor-absorbing composition to large fabric surface areas and/or a large number of garments and/or articles. The spray dispenser herein does not normally include those that will substantially foam the clear, aqueous odor absorbing composition. It has been found that the performance is increased by providing smaller particle droplets. Desirably, the Sauter mean particle diameter is from about 10 μm to about 120 μm , more preferably, from about 20 μm to about 100 μm . Dewrinkling benefits are improved by providing small particles (droplets), as discussed hereinbefore, especially when the surfactant is present. See col.40-44.

Regarding claims 29-44, Trinh et al. teach a method of use of the cyclodextrin solution having the same limitations as recited in the instant claims. See col.44-46.

Accordingly, the broad teachings of Trinh et al. appear to anticipate the material limitations of the instant claims.

7. Claim 1, 4, and 6-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Burzio et al. (US 5,496,494).

Burzio et al. teach a process for decreasing the build-up of inorganic incrustations on textiles deriving from water hardness and due to repeated washing cycles with detergent compositions comprises the addition to the washing bath of a non-reducing carbohydrate and/or non-reducing carbohydrate derivative as co-builder. The co-builders used according to the present invention are preferably non-reducing di-, tri- or oligo-saccharides and/or hydrogenated mono-, di- or oligo-saccharides. See abstract and col.1, ln.35-40.

Art Unit: 1751

Specifically regarding claims 4, 6-44, Burzio et al. teach Representative examples of non-reducing carbohydrate derivatives include glycerol, erythritol, threitol, xylitol, arabitol, ribitol, sorbitol, mannitol, galactitol, tallitol, allitol, altritol, iditol, gulitol, heptitols, anhydrohexitols, maltitol, lactitol, maltotritol, palatinit, alkyl glucosides, alkyl-polyglucosides, hydrogenated leucrose, hydrogenated glucose syrup, hydrogenated maltose syrup, hydrogenated invert sugar, hydrogenated high fructose syrups, and mixtures thereof. The cobuilders are preferably the so-called sugar alcohols, particularly sugar alcohols having the general formula $\text{HOCH}_2(\text{CHOH})_n\text{CH}_2\text{OH}$ where n has a value from 2 to 5 inclusive. Particularly preferred are the hexitols specially sorbitol or mannitol. Mixtures of sugar alcohols may also be used e.g. mixtures of sorbitol and mannitol and mixtures known as hydrogenated starch hydrolysates which contain sorbitol, maltitol, maltotriitol and higher oligomers.

The co-builders preferably are hexitols, such as sorbitol and/or mannitol; or sucrose and/or glycerol. In accordance with another aspect of the present invention, there are provided detergent and/or antiincrustating compositions containing the hereinbefore defined co-builders. These compositions may also contain usual components such as anionic, non-ionic, cationic or amphoteric surfactants, alkali metal salts (e.g. sodium carbonate, sodium silicate), neutral salts (e.g. sodium sulphate), zeolite, bleaching agents, bleaching activators and minor ingredients. In accordance with one preferred embodiment of the present invention the co-builders are used in combination with zeolite-based detergents. The co-builders used according to the present invention are particularly efficacious in the presence of inorganic persalts, such as sodium perborate

Art Unit: 1751

tetrahydrate or monohydrate. The amount of the co-builders used in the process can vary from 1 g/washing cycle to 40 g/washing cycle, and preferably from 2 g/washing cycle to 20 g/washing cycle. This amount is comprised within the range of from 0,5% to 20% and preferably comprised within the range of from 1% to 10%, expressed as 100% dry substance of the detergent or antiincrustating compositions. The co-builders used according to the present invention are naturally derived, biodegradable compounds. In combination with detergents they reduce the build up of inorganic incrustations on fabrics and on washing machine components. Such activity is more significant at high temperatures e.g. at 90.degree. C.

In examples 1-7, Burzio et al. teach fabric care compositions comprising oligosaccharides as recited by the instant claims. Accordingly, the broad teachings of Burzio et al. appear to anticipate the material limitations of the instant claims.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 1751

9. Claims 1-44 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 of U.S. Patent No. 6,001,343. Although the conflicting claims are not identical, they are not patentably distinct from each other because, claims 1-41 of US 6,001,343 encompass the material limitations of the instant claims.

Conclusion

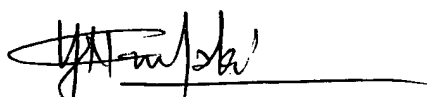
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

11. Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Preeti Kumar whose telephone number is 703-305-0178. The examiner can normally be reached on M-F 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 703-308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-872-9309.

Preeti Kumar
Examiner
Art Unit 1751



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PK